



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF STATE COUNSEL
LITIGATION BUREAU

Writer Direct: (518) 776-2589

September 27, 2017

Hon. Christian F. Hummel, U.S. Magistrate Judge
James T. Foley U.S. Courthouse
445 Broadway, Room 441
Albany, NY 12207

Re: *Thornton v. Dysard, et al*, 16-CV-1358 (LEK)(CFH)

Dear Judge Hummel:

I write in in partial opposition to plaintiff's Motion to Approve Consent Judgment/Motion for Court Approval of Civil Rights Settlement. See Docket No. 42. Specifically, I write in opposition to plaintiff's Affirmation, and to seek that it be stricken from the docket. See Docket No. 42-1.

Plaintiff's affirmation is inappropriate in several ways. In the affirmation, plaintiff attempts to litigate disputed facts as though the affirmation is being submitted as part of a motion for summary judgment, or in preparation for trial. This is problematic for various reasons, including but not limited to the fact that Mr. Keach affirms these alleged facts under penalty of perjury, and not upon information and belief. More importantly, the motion is submitted in order for an already negotiated and agreed upon settlement to be approved by the court. Any substantive factual elements are no longer relevant to the proceeding, and the pending settlement does not in any way indicate that defendant(s) concede liability, wrongdoing, or agree in any way to the allegations put forth by plaintiff(s) either in the complaint or in the affirmation submitted by Mr. Keach. See Docket No. 42-1.

Defendant Smith opposes and disputes the content of the allegations made in plaintiff's counsel's affirmation, because it goes well beyond the proper purpose of the motion. The inclusion of substantive factual allegations in a motion to approval settlement is not appropriate, the affirmation should be stricken, and plaintiff should be directed to file a new affirmation.

Thank you for your consideration of this matter.

Respectfully yours,

s/ Rachel Maman Kish

Rachel Maman Kish
Assistant Attorney General
Bar Roll No. 518559

Cc (via ECF and email):

Elmer R. Keach , III

Law Offices of Elmer Robert Keach, III, P.C.
Attorney for Plaintiff(s)
One Pine West Plaza - Suite 109
Albany, NY 12205
518-434-1718
Fax: 518-770-1558
Email: bobkeach@keachlawfirm.com

Jessica M. Gorman

Law Office of Jessica M. Gorman
Attorney for Plaintiff(s)
P.O. Box 706
Albany, NY 12201
518-795-5022
Email: jmgorman@jmgormanlaw.com

Maria K. Dyson

Law Offices of Elmer Robert Keach, III, P.C.
Attorney for Plaintiff(s)
One Pine West Plaza - Suite 109
Albany, NY 12205
518-434-1718
Fax: 518-770-1558
Email: mariadyson@keachlawfirm.com

Dennis B. Schlenker

Office of Dennis B. Schlenker
Attorney for Defendant Fernandez
174 Washington Avenue
Albany, NY 12210
518-463-4473
Fax: 518-463-7926
Email: badger44@verizon.net

Jeffrey P. Mans

Lippes Mathias Wexler Friedman LLP

Attorney for Defendants Tietz, Macie, Potter, Trudell, & Bruno

54 State Street, Suite 1001

Albany, NY 12207

518-462-0110

Fax: 518-462-5260

Email: jmans@lippes.com

William P. Fanciullo

Office of William P. Fanciullo

Attorney for Defendant Dimick

32 Windsor Court

Slingerlands, NY 12159

518-339-3389

Email: wpf2002@aol.com